HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 6654 of 2001 (S/S)
(Old No. 4765 of 1999)
Narendra Singh
Vs.
State of U.P. & others.

Approved for reporting.

Not approved for reporting

Date of decision 17.5.2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 6654 (SS) of 2001
(Old No. 4765 of 1999)

Narendra Singh ..... Petitioner

Versus

1. State of U.P.
2. Engineer in-Chief, Irrigation Department
3. Superintending Engineer, Research & Planning Division, Pithoragarh
4. Executive Engineer, Research and Planning Division II, Pithoragarh
5. Chief Engineer, Work Charge Establishment Cell Irrigation Department, Lucknow..... Respondents

Sri Rajesh Joshi, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 17.5.2005

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents to give appointment to the petitioner.

Briefly stated the father of the petitioner was employed as Gauge Reader in the Work-charge establishment of the Executive Engineer, Research and Planning Division, Pithoragarh who died on 4.1.1996 after completing 22 years of service. The petitioner moved an application for employment

under Dying in Harness Rules. The Executive Engineer forwarded this application on 17.2.1999 before the Superintending Engineer. The Superintending Engineer vide his letter dated 10.3.1997 requested the Chief Engineer, Lucknow mentioning therein that the father of the petitioner had expired on 4.1.1996and his son has applied for his appointment along with his certificates.

The grievance of the petitioner is that the respondents have not considered him for appointment under Dying in Harness Rules the purpose of providing the appointment on the compassionate ground is to mitigate hardship due to sudden death of bread earner.

The petitioner ahs placed reliance on the Apex Court's judgment in the case of Smt. Shushma Gosai and others vs. Union of India and others, 1989 (4) SCC, 468. The Apex Court has held as under:

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to

keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent 2 to appoint Sushma Gosin appellant 1 in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

The counsel for the petitioner has submitted that the family of the petitioner is suffering financial hardship due to death of the sole bread earner of the family and it would be in the fitness of things if a member of the family be provided appointment on the compassionate ground.

It has been held in the case of Syed Sujjat Hasan vs. District Judge, Lakhimpur Kheri and others (1999) 1 UPLBEC 7851, as under:

"*In the case of Umesh Kumar Nagpal Hon'ble Supreme Court further observed that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post mush less a post held by the deceased. What is further, mere death of an employee, in harness does not entitle*

any member of the family to such source of livelihood. The Government of the authority concerned ahs to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to offered to the eligible member of the family. The posts in classes III and IV are the lowest posts in non-manual and a manual categories and hence they along can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.

As far as the first and third contentions are concerned, I am definitely of the view that the dying in harness Rules on the demise of a public servant does not vest a substantive right for compassionate appointment to the member of the family of the deceased. What has to be examined by the appointing authority is, the financial position of the family. Whether the family after the death of sole earning member can tide over the financial crisis or not, needs to be enquired into. In the regard making an application at much belated state may raise a presumption that the family was not in financial crisis."

Considering the financial condition of the petitioner it would not be proper for the respondents to keep this case pending for years.

The respondents are, therefore, directed to consider the application of the petitioner for compassionate appointment under Dying in Harness Rules, within three weeks after the receipt of certified copy of the order.

With the aforesaid observations the writ petition is allowed. No order as to costs.

Rajesh Tandon, J.

17.5.2005
Dhyani